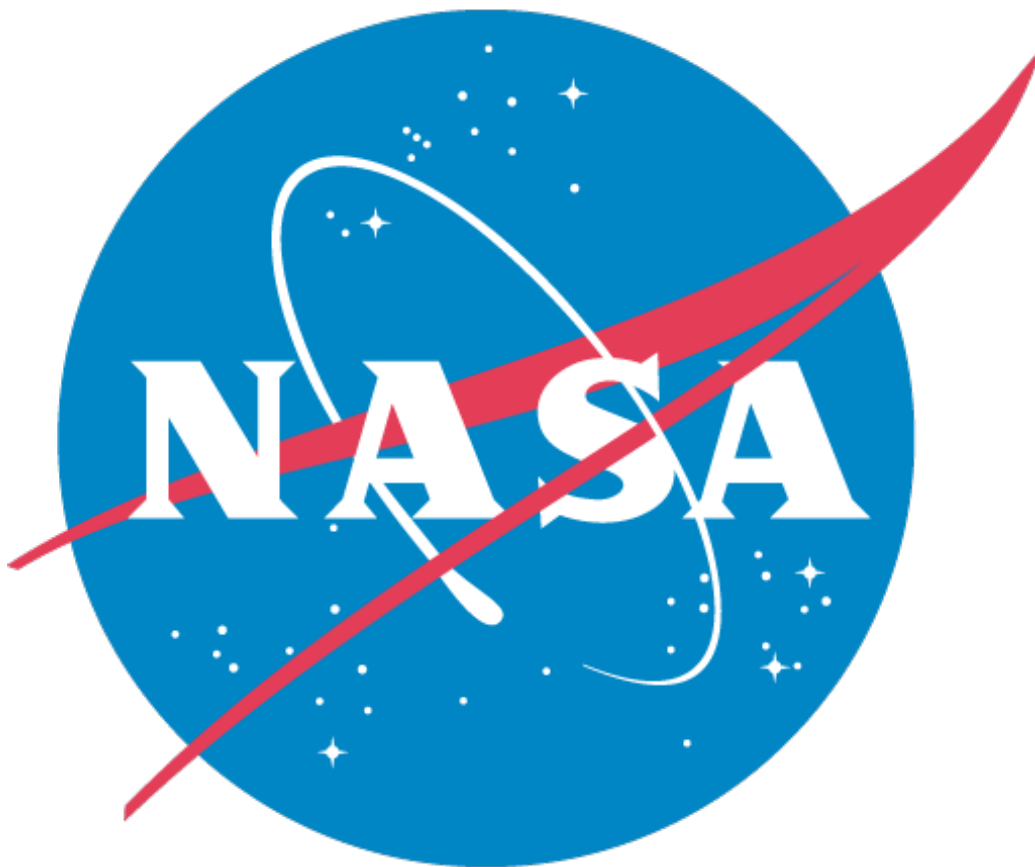


**NOTIFICATION AND FEDERAL
EMPLOYEE ANTI-DISCRIMINATION
AND RETALIATION (No FEAR) ACT
ANNUAL REPORT**



FISCAL YEAR 2021

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EXECUTIVE SUMMARY

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No FEAR Act”), Public Law 107-174, was signed into law on May 15, 2002, and became effective on October 1, 2003. The No FEAR Act is intended to reduce the incidence of workplace discrimination within the Federal Government by making agencies and departments more accountable. First, the No FEAR Act governs the process of reimbursements to the Treasury Department's judgment fund by agencies, from their budgets, for judgments against agencies and settlements for discrimination in the workplace. Additionally, the No FEAR Act requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws, in part by requiring that each Federal agency post quarterly on its public Web site certain statistical data relating to Federal-sector equal employment opportunity complaints filed with each agency.

Furthermore, Section 203 of the No FEAR Act specifically requires each Federal agency to submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission (EEOC), and the Attorney General, an annual report with specific information relating to each agency's EEO complaints activity. The report is required to be delivered to all parties within 180 days after the end of the fiscal year. This report constitutes the National Aeronautics and Space Administration's (NASA) annual No FEAR Act Report for Fiscal Year (FY) 2021.

In FY 2021, NASA reimbursed the Judgment Fund established by 31 U.S.C. 1304 in the amount of \$30,000, none of which was separately attributable to attorneys' fees. NASA did not discipline any employees for discrimination, retaliation, harassment, or other infractions covered by the annual reporting requirements of the No FEAR Act. There were no civil actions filed against the Agency in Federal court in FY 2021, and five cases are currently in litigation in U.S. District Courts.

NASA continued to accomplish its mission by restructuring and re-evaluating policies, procedures, and practices; and identified and addressed challenges and opportunities for equal employment opportunity (EEO) and diversity, equality, inclusion, and accessibility (DEIA). The Office of Diversity and Equal Opportunity (ODEO) implemented strategic actions, that have proven effective, to resolve and reduce the number and improve timeliness of EEO complaints. As a result of these efforts, ODEO monitored complaint trends, conducted EEO Counselor training for Enterprise staff to optimize employees' skills; and used an Agency cadre of settlement officials to resolve complaints at the lowest possible level. Additionally, proactive, and aggressive efforts contributed to a robust and effective alternative dispute resolution (ADR) program that increased offer and participation rates that exceeded the government-wide standard. The initiatives are outlined as follows:

- 1) Determined trends in the informal and formal complaints processes;
- 2) Rigorously and consistently implemented plan to focus resources on agency responsibilities and activities;
- 3) In-house subject matter experts trained all ODEO staff on EEO complaint processing;

- 4) Held frequent technical assistance and team-building meetings with all EEO complaint processing staff;
- 5) Continuously implemented quality practices in all programs;
- 6) Expanded the use of data and technology to support, evaluate, and improve the Agency's programs and processes;
- 7) Expanded the scope of the Agency's harassment policy to prohibit all forms of harassing conduct, regardless of whether the conduct is based on a protected class.
- 8) Continued to maintain an Anti-Harassment Program that has been highlighted as a model program by stakeholders, including the U.S. Equal Employment Opportunity Commission and the U.S. Commission on Civil Rights; and
- 9) Continued to operate DEIA initiatives and programs across the Enterprise, including: special emphasis programs; special observances; targeted outreach and recruitment, Minority Serving Institutions and colleges and universities with under-served populations; engagement with affinity groups and professional organizations; coordination of Employee Resource Groups and Advisory Working Groups; and the Management Directive 715 Model EEO Program.

I. LAW AND REPORTING REQUIREMENT

The No FEAR Act (P. L. 107-174) is intended to reduce the incidence of workplace discrimination within the Federal Government. The Act requires Federal agencies to post certain statistical data relating to Federal sector EEO complaints filed against the Agency. The specific annual reporting requirement outlined in Section 203 of P.L. 107-174 is as follows:

SEC. 203. REPORTING REQUIREMENT.

- (a) **ANNUAL REPORT.** –Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the EEOC, and the Attorney General an annual report which shall include, with respect to the fiscal year—
- (1) The number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;
 - (2) The status or disposition of cases described in paragraph (1);
 - (3) The amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorney's fees, if any;
 - (4) The number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
 - (5) The final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
 - (6) A detailed description of—
 - (A) The policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—
 - (i) Discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or
 - (ii) Committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and
 - (B) With respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;
 - (7) An analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—
 - (A) An examination of trends;
 - (B) Causal analysis;
 - (C) Practical knowledge gained through experience; and
 - (D) Any actions planned or taken to improve complaint or civil rights programs of the agency; and

- (8) Any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

Responsibility for the issuance of regulations governing implementation of Title II of the No FEAR Act was delegated to the Office of Personnel Management (OPM) which published final rules implementing the reporting and best practices of Title II of the No FEAR Act on December 28, 2006, effective February 26, 2007. These regulations may be found at Title 5, C.F.R. Part 724. The implementing regulations require a copy of the annual report to be submitted to the Director of OPM. NASA has prepared this report for FY 2021, based on the provisions of the No FEAR Act and its implementing regulations.

II. BACKGROUND

NASA is an independent agency of the United States government responsible for the civilian space program, as well as aeronautics and aerospace research. NASA has kept our Nation on the cutting edge of aeronautics and space exploration for over half a century, and drives advances in science, technology, exploration, and discovery to enhance knowledge, innovation, economic vitality, stewardship of the Earth's resources, and solutions to national and global challenges.

The Office of Diversity and Equal Opportunity (ODEO) helps NASA accomplish its mission by providing programmatic leadership and continually evaluating the Agency's policies, procedures, and practices to identify and address challenges and opportunities relating to equal employment opportunity (EEO) and diversity, equity, inclusion, and accessibility (DEIA). The Associate Administrator for ODEO provides executive leadership and oversight for the effective management of programs, resources, Agency-wide initiatives, and external civil rights requirements for both EEO and DEIA.

In Fiscal Year (FY) 2021, ODEO focused on the efficiency, effectiveness, quality, and timeliness of complaint processing. The development of new guidelines and standard operating procedures enhanced the provision of training and technical assistance for the ODEO Enterprise. Processing inefficiencies that caused extensive delays were addressed with notable improvement. The Agency eliminated its backlog of cases which significantly reduced the inventory of untimely EEO complaints pending adjudication. NASA used alternative dispute resolution in EEO pre-complaint processing which contributed to a decrease in formal discrimination complaints filed. NASA timely posted No FEAR Act data to www.nasa.gov, and timely submitted its Management Directive 715 Model EEO Program report and its Annual Statistical Report of Discrimination Complaints (Form 462) to the Equal Employment Opportunity Commission.

As a result of NASA's prioritization of DEIA, NASA has been ranked the "Best Place to Work in the Federal Government" among large Federal agencies for nine consecutive years, based on data from the OPM's Federal Employee Viewpoint Survey (FEVS) (See Figure 4). These positive perceptions among the workforce help translate into NASA's continued viability as an employer of choice. Moreover, NASA maintained its status as a leader in Federal DEIA efforts, recognized both by OPM and the Partnership for Public Service.

During the past year, NASA established new DEIA performance requirements for all NASA Senior Executive Service (SES) performance plans, as well as all managerial and supervisory performance plans. These new performance requirements further reinforce NASA's prioritization, support, and accountability for DEIA. NASA established an Agency-level DEIA Steering Committee to drive strategic prioritization and agency-wide implementation of the Administration's DEIA priorities. This Steering Committee will direct the development, coordination, and implementation of a new DEIA Strategic Plan for NASA.

III. RESULTS AND DATA

A. Civil Cases in Federal District Court

In FY 2021, no new civil actions were filed against NASA in Federal District court. Five (5) pending civil actions are described below:

Ames Research Center (ARC) – Litigation continues in the U.S. District Court for the Northern District of California on Plaintiff's claim of discrimination based on disability in violation of the Rehabilitation Act.

Goddard Space Flight Center (GSFC) – Litigation continues in the U.S. District Court for the District of Maryland on Plaintiff's claim of discrimination based on race and retaliation in violation of Title VII.

Headquarters (HQ) – Litigation continues in three cases filed in the U.S. District Court for the District of Columbia. In the first case the Plaintiff alleged discrimination based on race, color, age, disability, and reprisal in violation of Title VII, the Age Discrimination in Employment Act, and the Rehabilitation Act. In the second case the Plaintiff alleged discrimination based on age and disability in violation of the Age Discrimination in Employment Act and the Rehabilitation Act. In the third case, the Plaintiff alleged discrimination based on disability in violation of the Rehabilitation Act.

B. Judgment Fund

During FY 2021, NASA remitted a total of \$30,000 to the Bureau of the Fiscal Service, United States Department of the Treasury, to reimburse the Judgment Fund. None of this amount was separately attributable to attorneys' fees.

C. Disciplinary Actions Taken in Connection with Civil Cases

NASA did not take any disciplinary actions in connection with civil cases in FY 2021.

D. Adjustment to the Budget

No adjustment to the budget for FY 2021 was made to comply with the reimbursement obligations under the Judgment Fund maintained by the Bureau of the Fiscal Service in the United States Department of the Treasury.

E. Posting of EEO Complaints Processing Statistics

The FY 2021 year-end data for NASA's administrative discrimination complaints process was posted on the Agency's website in accordance with EEOC regulations at Title 29, C.F.R. Part 1614, Subpart G (implementing Section 301(c)(1)(B) of the No FEAR Act). See Appendix for No FEAR Act data for FY 2021.

F. Disciplinary Actions Taken in Connection with Cases Other Than Those Listed in Status of Civil Cases Section

On September 29, 2021, NASA issued a written reprimand to an employee resulting from an EEOC Office of Federal Operations decision finding a violation of Title VII.

G. Discipline Policy

NASA follows the guidance contained in its Desk Guide for Table of Disciplinary Offenses and Penalties for determining whether and to what extent formal disciplinary action is necessary in dealing with issues of employee misconduct. This Desk Guide, posted on the "NASA People" website under the link titled "NASA Desk Guides" is accessible to all NASA employees at https://www.nasa.gov/sites/default/files/atoms/files/nasa_desk_guide_tagged.pdf

The Agency's EEO and Anti-Harassment Policy Statements communicate NASA's commitment to promoting equal opportunity in employment, reasonably preventing and promptly correcting workplace harassment, and notifying employees of avenues to seek assistance and redress, as well as accountability for violation of these policies. Furthermore, the Agency's DEIA Policy Statement emphasizes NASA's commitment to a workplace that values, and is inclusive of, diversity. The NASA Administrator annually disseminates these policy statements to all personnel, and these policies are available to all employees on the NASA ODEO website at <https://www.nasa.gov/offices/odeo/policy-and-publications>

IV. ANALYSIS OF TRENDS AND CAUSAL ANALYSIS

A. EEO Complaint Activity

NASA's total Federal workforce increased from 17,577 in FY 2020 to 17,986 in FY 2021. In FY 2021, 34 informal counselings were initiated, representing a 38% decrease from the 55 initiated in FY 2020. Formal EEO complaint filings decreased 49%, from 39 in FY 2020 to 20 in FY 2021. ODEO made a concerted effort to address inefficiencies and ensure complaint processing uniformity by providing multiple training sessions for all ODEO staff. As a result, processing times have been significantly reduced at both the informal and formal complaint stages. ODEO emphasized the use of ADR to resolve matters and improve workplace relationships to create a productive working environment for all employees.

In FY 2021, NASA achieved an 89% timeliness rate in completing pre-complaint counseling. NASA will improve this rate in FY 2022 through enterprise-wide training on recently developed standard operating procedures and the pre-complaint process.

In FY 2021, NASA completed 95% of formal EEO complaint investigations within the regulatory time limits, with an average processing time of 206 days. This is an improvement over the FY 2020 timeliness rate of 86% and average processing time of 217 days. This improvement can be attributed to increased accountability and process improvements.

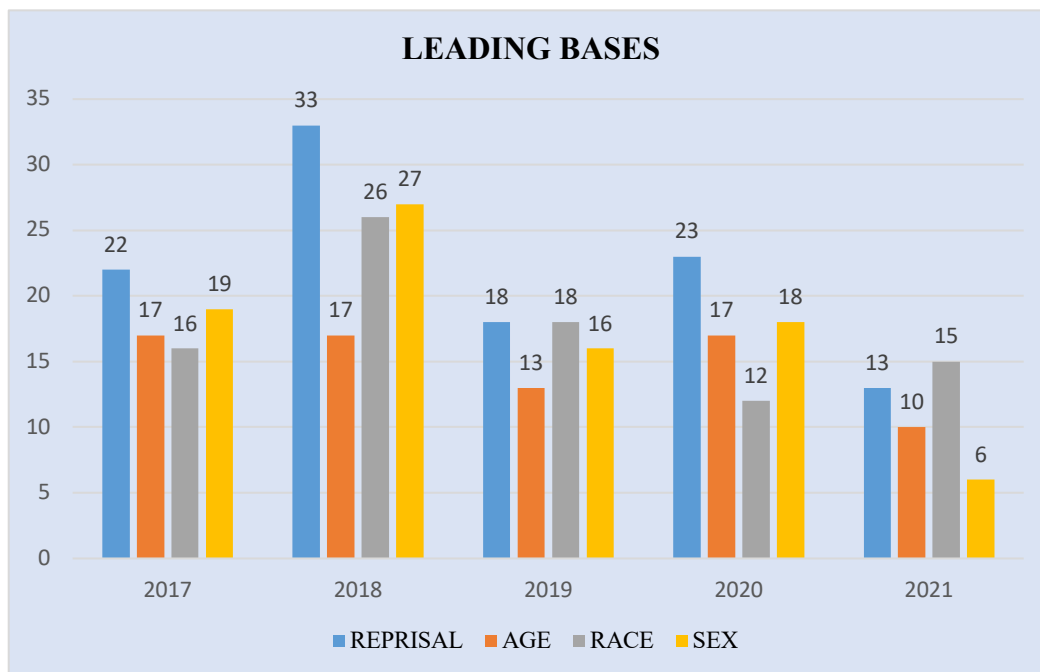
In FY 2021, NASA offered ADR in 58% of informal counselings, a 19% decrease from FY 2020's ADR offer rate of 72%. In FY 2021, NASA offered ADR in 24% of formal EEO complaints, a 37% decrease from FY 2020's 38% ADR offer rate.

In FY 2021, NASA timely issued Final Agency Decisions (FADs) 100% of the time, with an average processing time of 59 days. NASA has effectively eliminated a multi-year backlog of EEO complaints where the Complainants were awaiting FADs.

B. Bases and Issues in Discrimination Complaints

Formal discrimination complaints filed decreased 49%, from thirty-nine (39) complaints filed in FY 2020 to twenty (20) filed in FY 2021. As depicted in Figure 1, reprisal, race, and age were the three most frequently cited bases in discrimination complaints filed in FY 2021.¹

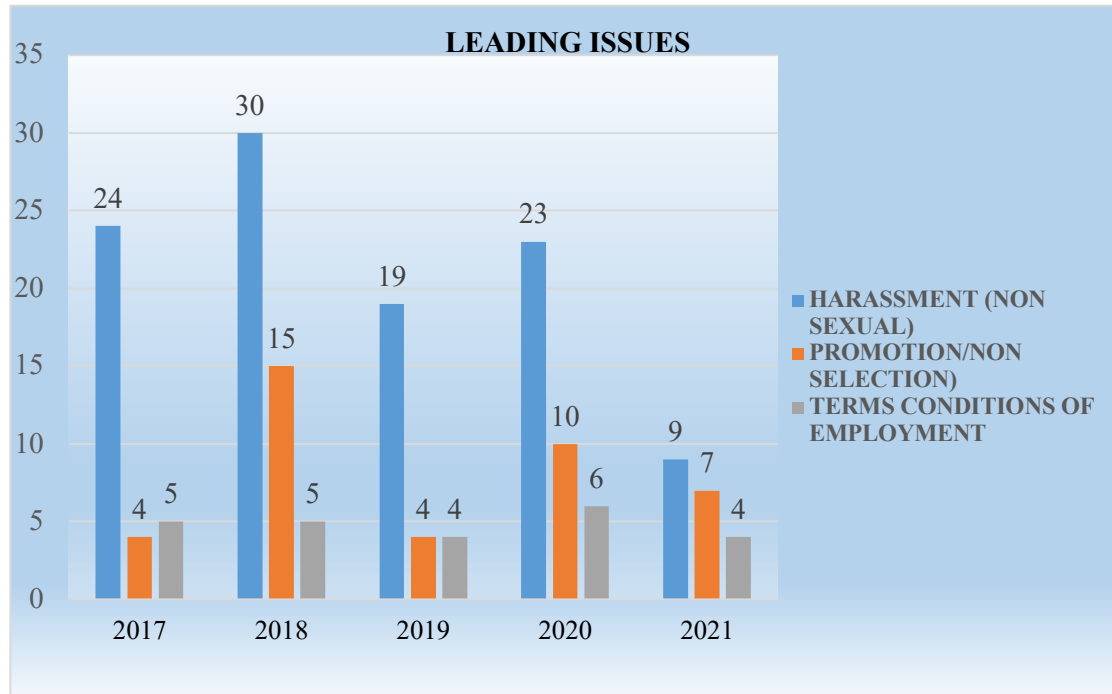
Figure 1. Most Cited Bases in Employment Discrimination Complaints



The three most cited issues in discrimination complaints filed in FY 2021 were harassment (non-sexual) (9 complaints filed), promotion/non-selection (7), and terms and conditions of employment (4). (See Figure 2)

¹ In FY 2020, one of the top leading bases was sex discrimination.

Figure 2. FY 2021 Leading Issues in Employment Discrimination Complaints



C. EEO Alternative Dispute Resolution (ADR) and Anti-Harassment Program (AHP)

NASA established and trained an internal cadre of mediators for Agency-wide deployment in FY 2018. The Agency relies on this resource to help ensure quality, efficiency, and cost-effective responses to the Agency's dispute resolution needs for EEO matters. NASA supplements this internal cadre with highly skilled mediators from the Federal Mediation and Conciliation Service. NASA requires that ADR be offered in all cases unless the case falls under an exception defined in the agency's EEO ADR policy.

Anti-harassment training was provided through the online anti-harassment training program. The educational and awareness opportunities contained in the training ensure that the NASA workforce fully understand employee and management roles and responsibilities under the Agency's procedures.

D. No FEAR Act Training Plan

NASA provided training for all Federal employees in accordance with the training requirements of the No FEAR Act of 2002. NASA mandates completion of an on-line training module using the System for Administration, Training, and Educational Resources for NASA (SATERN) for all managers and supervisors. In addition to the bi-annual No FEAR training requirement, the Agency requires new employees to take the training during orientation.

ODEO timely complies with No FEAR Act reporting requirements through the quarterly posting of EEO complaints data on the NASA website at <https://www.nasa.gov/offices/odeo/no-fear-act>.

V. ENHANCEMENTS AND IMPROVEMENTS IN NASA'S EQUAL OPPORTUNITY AND DIVERSITY PROGRAMS

A. Anti-Harassment Program

In FY 2021, 46 employees raised allegations under the anti-harassment program (AHP), and 36 cases were concluded (i.e., issuance of a decision at the conclusion of fact-finding) by the end of the fiscal year. NASA continues to proactively address situations before they rise to the level of actionable harassment. In 9 of the 36 closed cases, NASA took corrective action such as providing training or counseling, even though harassment was not substantiated.

As part of its continued efforts to prevent and address harassment, in January 2021, NASA substantially revised the NASA Procedural Requirement governing the AHP. The most notable revision was an expansion of the definition of harassing conduct to include any conduct that can reasonably be considered to adversely affect the work environment, regardless of whether the harassing conduct is based on a legally protected class or not. In February 2021, the former Acting Administrator issued a Policy Statement on Anti-Harassment.

NASA continued robust training and technical assistance efforts for both the AHP community of practice and the workforce at large. Throughout 2021, ODEO conducted training sessions for Center Anti-Harassment Coordinators on the new automated tracking system for allegations of harassment processed under the AHP. NASA continued to deploy virtual anti-harassment workforce training through an innovative gamified platform using avatars in workplace simulations. Since deployment three years ago, more than 1/3 of the NASA workforce has completed this voluntary training.

B. Diversity, Equity, Inclusion and Accessibility

NASA successfully provided guidance and technical assistance for the development of a new NASA DEIA plan and measurement tools. Such measurements include: issuance of the 2021 DEIA Policy Statement to the NASA workforce on September 28, 2021; submission of NASA's DEIA Self-Assessment to the Domestic Policy Council, the Office of Management and Budget, and the Office of Personnel Management, as required by Executive Order 14035; participation in the Future of Work Core Implementation Team; and adding several questions concerning DEIA to the NASA employee exit interview survey to better identify and evaluate potential employment barriers or DEIA-related issues.

NASA continued to be a recognized leader in DEIA efforts to make the Federal workforce more diverse and its workplaces more inclusive. For the ninth consecutive year, NASA was named the Best Place to Work in Government among large agencies by the Partnership for Public Service in 2021. This rating is based on an analysis of the results of the Federal Employee Viewpoint Survey (FEVS). While the New Inclusion Quotient questions were not included in the FEVS, NASA's scores on several DEIA-related questions increased. For example, between 2019 and 2020 the percentage of employees stating they agree or strongly agree the question, "My supervisor/team leader is committed to a workforce representative of all segments of society" increased from 86.3% to 90.8%. In addition, the positive response rate to the statement "NASA leaders take proactive steps to prevent harassment in the workplace (for example, senior leadership messages to the workforce, use of posters and other communication materials, training, dialogues, or similar activities)" increased from 80.3% in 2019 to 88.7% in 2020. Positive responses also increased from 92.7% to 94% for the statement "My supervisor treats me with respect."

C. FEDERAL EXTERNAL CIVIL RIGHTS LAWS

NASA ensures equal opportunity and promotes diversity and inclusion in university and college science, technology, engineering, and mathematics (STEM) programs. The Agency provides technical assistance and legal compliance assessment to the STEM programs that the Agency funds. Title IX of the Education Amendments of 1972 compliance reviews are conducted on NASA grant recipients to ensure beneficiaries have equal opportunity to pursue, participate in, and benefit from academic research, career development opportunities, and educational activities.

APPENDIX

Equal Employment Opportunity Data Posted

Pursuant to the No Fear Act:

NASA (and below)

For 4th Quarter 2021 for period ending September 30, 2021

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Number of Complaints Filed	52	33	62	36	39	20
Number of Complainants	43	29	59	32	36	19
Repeat Filers	7	3	3	3	3	1
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2021 Thru 09-30
	2016	2017	2018	2019	2020	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	27	16	27	22	12	13
Color	6	7	11	7	9	7
Religion	0	1	2	3	5	2
Reprisal	37	22	38	19	23	13
Sex	15	19	28	14	18	6
PDA	0	0	0	0	0	0
National Origin	7	3	7	6	8	5
Equal Pay Act	0	1	1	0	0	0
Age	20	17	19	14	17	10

Disability	27	17	20	13	16	1
Genetics	0	0	0	0	0	0
Non-EEO	2	2	7	0	1	0
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2021 Thru 09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2016	2017	2018	2019	2020	
Appointment/Hire	6	3	5	6	5	2
Assignment of Duties	11	5	1	1	1	0
Awards	1	1	2	1	0	0
Conversion to Full Time/Perm Status	1	0	1	0	0	0
Disciplinary Action						
Demotion	1	0	2	0	1	0
Reprimand	1	1	1	1	0	0
Suspension	2	0	3	1	0	0
Removal	1	0	1	1	3	1
Other	0	0	1	0	0	0
Duty Hours	1	0	1	0	0	0
Perf. Eval./ Appraisal	19	6	8	8	4	1
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	27	24	34	19	23	9
Sexual	0	0	0	0	2	0
Medical Examination	0	0	0	0	0	0
Pay including overtime	3	2	1	1	0	0
Promotion/Non-Selection	9	4	15	5	10	7
Reassignment						
Denied	3	2	1	0	0	2
Directed	5	1	4	2	3	1

Reasonable Accommodation Disability	9	9	6	4	7	1
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0
Retirement	2	1	0	0	1	0
Sex-Stereotyping	0	0	0	0	0	0
Telework	6	1	1	2	1	0
Termination	2	2	5	2	6	2
Terms/Conditions of Employment	4	4	4	5	6	4
Time and Attendance	9	3	1	3	2	0
Training	1	4	2	2	0	1
Other						
User Defined - Other 1	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0
Processing Time	Comparative Data					2021 Thru 09-30
	Previous Fiscal Year Data					
	2016	2017	2018	2019	2020	
Complaints pending during fiscal year						
Average number of days in investigation	231.88	283.10	243.42	245.51	230.55	208.05
Average number of days in final action	176.83	253.00	245.90	353.00	89.87	42.88
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	228.72	276.63	248.00	256.73	237.89	207.62
Average number of days in final action	34.00	36.50	33.60	48.64	35.06	35.64
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	228.67	308.57	256.15	237.86	221.33	212.00

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Other - User Define													
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0	0
Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data												
	Previous Fiscal Year Data					2021Thru09-30							
	2016	2017	2018	2019	2020								
Total complaints from previous Fiscal Years	37		56		61		59		35		28		
Total Complainants	28		36		39		44		26		21		
Number complaints pending													
Investigation	2		0		0		0		0		0		
ROI issued, pending Complainant's action	0		0		1		0		0		0		
Hearing	25		39		42		43		33		27		
Final Agency Action	5		10		12		11		0		0		
Appeal with EEOC Office of Federal Operations	47		9		7		17		17		11		
Complaint Investigations	Comparative Data												
	Previous Fiscal Year Data					2021Thru09-30							
	2016	2017	2018	2019	2020								
Pending Complaints Where Investigations Exceed Required Time Frames	3		2		0		1		2		0		